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REMOVAL OF LOCAL HEALTH OFFICERS.

POWER OF REMOVAL BY STATE PUBLIC HEALTH COUNCIL RESTRICTED TO CERTAIN SITUATIONS.

A recent decision ¹ of the West Virginia Supreme Court of Appeals construes the statutes giving the State public health council power to remove from office a city health officer.

The statutes in question read as follows:

When in the opinion of the public health council any local health authority shall fail or refuse to enforce necessary laws and regulations to prevent and control the spread of contagious or infectious diseases declared to be dangerous to the public health or when in the opinion of the said council a public health emergency exists the commissioner of health may enforce the rules and regulations of the State department of health within the territorial jurisdiction of such local health authorities and for that purpose shall have and may exercise all the powers given by statutes to local health authorities * * * . And in such cases the failure or refusal of any local health officer or local health body to carry out the lawful orders and regulations of the public health council, shall be sufficient cause for the removal of such local health officer or local health body from office; and upon such removal the proper county or municipal authorities shall at once nominate a successor other than the person removed as now provided by law.

Any * * * municipal council shall have the power and authority to provide for a full-time health officer * * * who shall give his entire time to the duties of his employment and the general health and sanitation of his * * * municipality, * * * and perform such duties in relation thereto as may be prescribed by * * * ordinance of the municipality duly entered * * * .

It shall also be the duty of the public health council upon the recommendation of the proper authority of any municipality to appoint in such municipality one health officer whose term of office shall begin July 1, 1919, and continue for a period of two years unless sooner removed by the said municipality or by the public health council.

The charter of the city of Charleston gives the mayor power to appoint and remove certain city officers, including the health commissioner, and provides that "These appointments shall not require any confirmation by the council, but shall be made at the discretion of the mayor, who shall, with like discretion, have the full and complete power of the removal thereof."

Solely because of the failure and refusal of the city health commissioner of Charleston to devote his entire time to the duties of his office, the State public health council caused his removal from office and demanded that the mayor nominate some other person for the position. The mayor refused to recognize the validity of the acts of the public health council, and mandamus proceedings were brought to compel the retirement of the health commissioner and a nomination by the mayor.

¹ State ex rel. Churchman et al., State Public Health Council v. Hall, Mayor, et al., 102 S. E., 694.

The supreme court of appeals decided that the public health council had no power to remove the city health commissioner because of his failure and refusal to devote his entire time to official duties, and held that the power of removal was confined to the situation set forth in the statute and could only be exercised in cases of emergency affecting the public health as in the case of an epidemic within the limits of the local jurisdiction.

POWER OF CITY TO REGULATE GARBAGE DISPOSAL UPHELD.

The Supreme Court of Michigan in a recent case¹ has sustained the principle, recently enunciated by the Missouri Supreme Court in a case published in the Public Health Reports of May 28, 1920, that the property rights of individuals in garbage are subordinate to the general good and that garbage disposal is subject to control by municipalities under the police power.

The plaintiffs, proprietors of hotels and restaurants, conveyed to their farms outside the city and there fed to hogs and poultry the garbage from such hotels and restaurants. This was done in a cleanly manner, but was in violation of an ordinance of the city of Grand Rapids, and plaintiffs were notified by the city to discontinue such conveyance and disposal of their garbage.

The plaintiffs thereupon sought an injunction to restrain the city from interfering. The lower court granted an injunction, but on appeal the supreme court reversed the decree and enjoined plaintiffs from conveying the garbage through the streets and from violating the garbage ordinance in any manner.

In answer to the contention of plaintiffs that they had a right to dispose of garbage produced upon their own premises because it was property of value, and that as to them the ordinance was wanting in the due process of law required by the Constitution, the supreme court held that the city had the right to regulate the disposal of garbage and that the plaintiffs were compensated for any loss in the common benefit secured by the ordinance.

¹ *Pantlind et al. v. City of Grand Rapids*, 177 N. W., 302.

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